MISCELLANY.

Government by Receiver.—A current press report states that creditors of a city in one of the southern states have applied for a receiver to take charge of the fiscal affairs of the city. The application challenges attention not only by its novelty, but by the legal questions which it suggests. Is it possible to displace a constitutionally elected officer by a judicial appointee without infraction of the fundamental principles of self government? What limit, other than the discretion of the appointing judge, is imposed on the power of such an appointee? A few years ago a magazine fictionist exploited a plot wherein a coterie of bondholders aided by a subservient judge took possession of the government and finances of New York City by the expedient of a receivership. Is this to be another instance in which the novelist has proven himself a prophet? It is probable, however, that this unique application will receive but scant judicial consideration. It is exasperating enough, no doubt, to the creditors to be kept out of their money by official mismanagement. But one of the inevitable consequences of a recognition of the right of popular self government is the right of the people in their sovereign capacity to make mistakes without being answerable to anyone. There is a county in Missouri which has for over a decade resisted the enforcement of a federal decree for the payment of certain county bonds. The bonds were issued in aid of a railroad, the railroad never came, but the genial promoter had lost no time in getting the bonds into the possession of a "bona fide" purchaser. It is said that the amount of the bonds with interest now equals the taxable value of all the property in the county. Successive county boards have spent their entire terms in jail for contempt rather than order the payment of the bonds. There is no record that a receiver was ever applied for in that case, though the temptation to some drastic action must have been considerable.—Law Notes.

Professor Wigmore's Suggestions.—In a preface to the recently published supplement to his work on evidence, Professor Wigmore considers at some length the faults of our system of evidence and their cure. In so doing he is distinctly less radical than one would expect from his past dire assaults on established nomenclature. While declaring that "a complete abolition of the rules is at least arguable," he regards it as beyond the realm of possibility, for the reason, among others, that our trials are so entirely in the control of men imbued with those rules that the practice of the present rules would survive a fiat abolishing them. Coming to the corrigible faults of our system he asserts them to be three, "inflexibility," "exaggeration of details" and "exaggeration of errors." To remedy the inflexibility of the system, he proposes a threefold remedy: (a) A power in the trial judge to dispense with a rule of evidence unless there is a bona

fide dispute as to the fact which the evidence tends to prove or as to the danger which the rule aims to safeguard. (b) That the decision of the trial judge, while reviewable as to the tenor of a rule of evidence, shall be final as to its application. (c) That the trial judge shall have the right to express to the jury his personal opinion as to the weight of the evidence. As to "exaggeration of details," while recognizing the prevalence of the evil and the need that it be minimized Professor Wigmore says: "What specific measure could avail to this end we are unable to suggest." To rectify exaggeration of errors, he recommends a real "harmless error" law, pot one which begs the question by leading the appellate tribunal to speculate as to whether the error did in fact affect a substantial right or as to what the jury might have done. "The sound form," he says, "requires the appellate court to determine according to what the jury should have done."

But running through all these suggestions, excellent enough perhaps as palliatives, is the same assumption that a jury must be safeguarded from error and imprudence by some superior order of intelligence. They miss the fundamental truth of democracy that the highest justice which fallible humanity can attain is the common conscience and common sense of common men. In Professor Wigmore's concluding paragraph is, however, a glimpse of idealistic insight. He says: "No reform of rules of evidence will ever of itself, i. e. as an improved rule of law, accomplish much in promoting actual justice. It may remove an intellectual error from our records. And it may of its own force effect some good for some time. But on the whole its effect must depend upon its surrounding conditions and their coincident advancement. The administration of justice, being a human affair, is not very unlike the human body. The perfect operation of any one organ is dependent more or less on the general conditions of the rest of the body. And the system of evidence is dependent upon procedure in general, upon the organization of courts, upon the personnel of the judiciary and of the bar, upon the human nature of witnesses, and upon the temper of the community in wanting and supporting a high and intelligent standard of justice. Let us therefore expect that the system of evidence, on the whole, will most readily improve when the men who administer it also improve and the system of justice as a whole advances. Sound rules of evidence, in short, are as much a symptom as a cause of better justice."—Law Notes.

A "Busher."—The "baseball bug's" "happy days" are near. It might be appropriate for his sake to recount the trials and tribulations of a "busher" who had signed in the "big league." Hageman, baseball pitcher, signed with the Boston American League Baseball Club in the spring of 1912 at a salary of $400 per month. In contracting with the club he had naturally come under what is known in the baseball world as the rules of the National Commission. Hage-

man pitched but two games for Boston. He was then sent to Jersey City at the same salary. He was there forced to sign another contract at the same salary. It was understood by him that he could at any time be recalled by the Boston American League team. He stayed with the Jersey City League team but a short time, when the president of the Boston American League Baseball team sold him to Denver, which club was to pay him but $250 a month. Hageman refused to report to Denver. He reported for duty every playing day to the Boston team, with which he had originally signed. At the end of the season he assigned his claim to the plaintiff, the Baseball Players' Fraternity, Incorporated, which sued the Boston Club for his salary. The court, in speaking of his contract with the Boston Club, said: "Another onerous provision of the contract which Hageman was obliged to make with the defendant, or suffer the penalty of being suspended without pay and without the right to negotiate a contract for employment with any club which was a party to the National Agreement, is one by which the defendant was at liberty at any time, after the beginning and prior to the completion of the period of the contract, to terminate all liability under the contract on ten days' notice in writing to him, but he had no option to terminate his liabilty under the contract at any time or in any manner. A player originally voluntarily becomes obligated, but it is manifest that many of the provisions to which he becomes subject are coercive, and are so drafted that they may be enforced and applied arbitrarily, as has been done in the case at bar. In so far, therefore, as the provisions of such a contract are sustained as valid, they should be construed liberally in favor of the player."

The court further held that, by reasserting a right to dispose of his services to Denver after he had signed a contract with Jersey City, the Boston Club waived its right, if any, to regard his signing with Jersey City as a release of itself from liability to him on the original contract of hiring; also, in effect, that, where the contract required that all major league clubs should file waivers of their right to his services under the National Agreement of organized baseball before defendant could rightfully sell him to a minor league club, and the player was sold to such club and the action was claimed to breach his original contract with defendant club, the burden of proof was on the club to show that the waivers required by the terms of its contract with the player had been filed, and, in the absence of evidence, there was no presumption to sustain such a burden. Again, where a contract, on account of harshness in its terms, must be construed in favor of the player, in the absence of express authorization in the contract the club can not transfer his services to another club at a lesser salary, although conditions precedent to the club's right to transfer at all have been performed. Baseball Players' Fraternity, Inc. *v.* Boston American League Baseball Club, 151 New York Supplement, 557.